

## HUMAN SERVICES BOARD

## INTRODUCTION

## FINDINGS OF FACT

1. The petitioner first applied for subsidized day care in July 2003. This was based on the petitioner expecting the birth of her child, who was born in August.
2. The petitioner lives with her husband and the child. The petitioner is an undergraduate student at the University of Vermont. Her husband is a graduate student at the same

university. The petitioner was recently granted U.S. citizenship.

3. The petitioner's husband is currently a registered alien. His present immigration visa requires him to maintain his student status and limits his employment to a certain number of hours and only through the university where he is studying.

4. The family's income appears to render them financially eligible for a child care subsidy. However, the Department's regulations (see *infra*) do not allow subsidies for parents with undergraduate college degrees who are currently enrolled in graduate school.<sup>1</sup>

5. However, due to the legal limitations on the petitioner's husband's ability to work, the Department, in August 2003, granted the petitioner an exception to its graduate student policy and allowed the petitioner a child care subsidy in an amount of fifty percent of the usual subsidy for a six-month period. This exception was extended until May 2004.<sup>2</sup>

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<sup>1</sup> The petitioner was recently found eligible for RUFA benefits. She has also applied for child care benefits through Reach Up. A decision on that application is pending, and is the subject of a separate fair hearing.

<sup>2</sup> The petitioner initially appealed the limitation of the exception to a fifty percent subsidy, but in a decision March 31, 2004, the Board upheld the Department's decision (see Fair Hearing No. 18,647).

6. The petitioner requested a hearing in this matter after the Department notified her in June that it would not extend the exception beyond May 31, 2004. In a Commissioner's Review decision dated August 4, 2004, the Department explained that its decision was based on "an increasing demand and decreasing revenues" in the Child Care Subsidy Program.

7. The petitioner maintains that if she has to limit or terminate her graduate studies at this time due to an inability to find affordable child care, it could jeopardize her continuing eligibility for the VSAC grant with which she has been continuing her undergraduate studies.

ORDER

The decision of the Department is affirmed.

REASONS

The regulations adopted by the Child Care Services Division require a recipient to meet income eligibility requirements and show a "service need" as a condition to eligibility. CCS Regulation 4032. "Service Need" is defined as follows:

A service need exists when child care is necessary to support a goal of "self-support" or "protection" or "family support".

. . .

It shall be assumed that each primary caretaker residing in the child's home is able and available to provide child care unless a service need is established due to one of the following conditions:

- a. Employment (includes self-employment)
- b. Training
- c. Incapacity
- d. Requires Protective Services Child care
- e. Determined eligible by risk factors for Family Support Child Care.
- f. Seeking employment

Regulation 4033, Child Care Services  
Regulations, Rev. 11/1/90

"Training" is specifically defined in the statute authorizing child care services at 33 V.S.A. § 3511(6) as "an activity, approved by the commissioner or the commissioner's designee, which is likely to lead to employment or required to maintain employment". In the regulations, the commissioner has approved the following activities:

Any activity which, in the opinion of the Commissioner or her/his designees, is likely to lead to employment within one year of completion of training or which is required to maintain employment. Approved training programs include:

1. Work training programs sponsored by the Department of Social Welfare;
2. Work experience or work study programs;

3. High School (public or private);
4. College;
5. Adult Basic Education (ABE);
6. Job Training Partnership Act Programs (JTPA);
7. Start-Up self-employment activities;
8. Other training programs approved by the Commissioner or her/his designee.

CCS Regulation 4031

In several past Fair Hearings (including one that involved this family) the Board has agreed with the Department's interpretation of the above regulations as excluding graduate programs of study and it has upheld the Department's exercise of its discretion to exclude such programs based upon the need to conserve limited resources and the fact that graduate degrees generally are not needed to obtain employment. In light of the above, it cannot be concluded that the Department is abusing its discretion in refusing to extend the petitioner's fifty percent subsidy as an exception to its usual policy.

This is a household in which both parents are post-secondary students. Although the petitioner, as an undergraduate student, has a "service need" under the above regulations, and even though it appears that her husband

presently is unable to work more hours, unlike most other families one parent is on the verge of obtaining a graduate degree and the other an undergraduate degree. It is reasonable to expect that once the petitioner's husband obtains his degree he will have considerable earning potential. Under these circumstances, it does not seem contrary to the purposes of the child care subsidy program if the petitioner were forced to temporarily cut back on her college education in order to provide additional income for the family until her husband can complete his program of graduate study. Even if such a temporary reduction or termination of her studies might cause her to lose her study grant, it is entirely reasonable for the Department to conclude that the longer-term financial prospects for this family are far brighter than most in its subsidy program.

Although one can sympathize with the petitioner's dilemma, inasmuch as it cannot be concluded that the Department's decision in this matter constitutes an abuse of discretion, the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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